

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA J CLAUSEN
Claimant

APPEAL 19A-UI-01729-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 05/13/18
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 18, 2019, (reference 05) unemployment insurance decision that allowed benefits based upon a determination that claimant was employed on a temporary basis and worked until her assignment was completed. The parties were properly notified of the hearing. A telephonic hearing was held on March 13, 2019. The claimant, Brenda J. Clausen, participated. The employer, Express Services, Inc., participated through Josi Chambers, Front Office Coordinator. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently assigned as an assembly laborer at Winnebago, from November 13, 2017, until January 10, 2019, when claimant's assignment at Winnebago ended due to her attendance.

The employer has a policy that an employee report back within three days of an assignment ending to request additional work in order to remain an active employee. Claimant called on Friday, January 11, 2019, and spoke with Autumn at Express. Claimant inquired about what to do with her Winnebago badge, as she needed to return it in order to get her last check. Autumn told her to just bring it into the office and Express would take care of it. Claimant then asked

when "Day One" was for purposes of the three-day policy. Autumn told her that that day, January 11, was "Day One."

On Tuesday, January 15, claimant came into the office to turn in her Winnebago badge and safety glasses. She had a conversation with Holly and Autumn while in the office. Claimant asked if there was any work available at the time, and they told her that nothing was available and employers were backing off because business was slow.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,295.00, since filing a claim with an effective date of May 13, 2018, and a reopened date of January 20, 2019, for the seven weeks ending March 9, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. Holly Eichmann participated on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Iowa Code § 96.5-(1)-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce

during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony more credible than the employer's testimony. Claimant presented a firsthand account of her contacts with the employer, while the employer relied on secondhand witness testimony.

In this case, claimant was notified that her assignment ended on Thursday, January 10, 2019. Claimant reported back to the employer on Tuesday, January 15, and requested a new assignment. At the time, no work was available for her. The evidence shows, and the administrative law judge finds, that claimant contacted the employer within three working days of the notification of the end of the assignment, indicated availability for work, requested reassignment, and there was no work available. Therefore benefits are allowed, provided she is otherwise eligible.

As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The February 18, 2019, (reference 05) unemployment insurance decision is affirmed. Claimant separated from the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn